

# BOARD OF PESTICIDES CONTROL

**February 18, 2005**

Board Rooms, Senator Inn & Spa  
284 Western Avenue, Augusta

## AGENDA/MINUTES

**9:30 A.M.**

Chair Carol Eckert called the meeting to order at 9:34 A.M. Other members in attendance included Berry, Bradstreet, Humphries, Jemison and Walton. Simonds was unable to attend.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the January 14, 2005 Board Meeting

Action Needed: Amend and/or Approve

- ☒ Berry/Jemison: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Workshop Session to Review Constructive Comments Submitted for Proposed Chapter 26

January 21, 2005 was the deadline for persons to submit constructive suggestions for revising proposed Chapter 26 – Standards for Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools. Thirteen letters/e-mail messages were received offering a wide variety of opinions along with 37 postcards containing a form message asking the Board to adopt the rule without any weakening amendments. The Board will devote the first hour of this meeting to a review of the information received. It is anticipated that the Board will provide guidance to staff on how a new proposed rule might be drafted.

Please note the Board will not entertain any questions or additional comment from persons in the audience during this or any future workshops needed to prepare a rule to take to public hearing.

- ☒ The Board reviewed the staff analysis of the written comments and expressed general agreement on the following points:

The Board is not weakening the rule but making revisions to address previously recognized requirements that are not reasonable.

Notification to employees should be provided at the time of hire and notification to inmates and patients should be at the time of admission.

Any person should have the right to request notification but the Board will probably not operate a formal notification registry for indoor applications.

The Board will not pursue longer REIs than are specified on product labels.

Provisions must be made to accommodate facilities that are open 24/7; and use of baits, gels, pastes, and crack and crevice treatments will be allowed without requiring removal of employees or other people.

The Board will not move licensed childcare and nursery schools to Chapter 27 but will explore including the approximately 1800 family daycare homes under the rule if staff can work out issues about their homes being considered “open to the use by the public”.

The Board will attempt to develop a universal logo that may be displayed at all entrances to buildings to warn persons that pesticides have been or are likely to be used.

The Board will coordinate with social service groups to publicize the universal logo but will not require information be presented in all native languages.

The Board will not be able to address all the requests made by sensitive individuals.

The Board will explore options for defining public health emergencies and any appropriate exemptions from the rule.

The staff will attempt to incorporate these points into a new draft proposal for review at future workshop sessions.

4. Section 18 Emergency Registration Renewal Request for Coumaphos to Control Varroa Mites and Small Hive Beetles in Managed Honey Bee Colonies

The Division of Plant Industry in the Maine Department of Agriculture, Food & Rural Resources has again requested that the Board petition EPA for a FIFRA Section 18 specific exemption for use of coumaphos (CheckMite+) to control both Varroa Mites and Small Hive Beetles in managed bee colonies. Fluvalinate has been used to control Varroa Mites since 1987 but resistance started developing in 1997. In addition, Small Hive Beetles have spread into Maine and there is no product currently registered to control this pest. The State Apiarist points out that a healthy bee keeping industry is needed to support Maine agriculture, and that a regulatory control product is essential so that migratory bee operators may continue to service the various commodity groups in this state. The request is supported by the product manufacturer, Bayer Corporation, and their regulatory specialist points out they are continuing to pursue a full Section 3 Registration with EPA.

Presentation By: Wesley C. Smith  
Pesticides Registrar

Action Needed: Approve/Deny request to petition EPA for a Section 18 Specific Exemption Registration for coumaphos for use with bees.

- ☒ Smith pointed out the Department was seeking two Section 18 Specific Exemption Registrations in this and the following agenda item. He called the member's attention to an EPA document noting that agency recognized the need for a streamlined process for handling registrations for honeybee pest controls. Smith then introduced Tony Jadczyk who explained beekeepers were facing a worldwide problem and needed several more registered products in order to avoid resistance from developing in their colonies. He indicated that a few counties had registered oxalic and formic acid but neither was likely to be available in the United States. Humphries asked why thymol was more toxic than coumaphos and Jadczyk responded that the botanical extracts were generally more dangerous to the applicator than the synthetic ingredients such as coumaphos.

Humphreys/Berry: Motion made and seconded to petition EPA for Section 18 Specific Exemption Registrations for both coumaphos and Thymol for use with bees.

In Favor: Unanimous

5. Section 18 Emergency Registration Renewal Request for Thymol to Control Varroa Mites in Managed Honey Bee Colonies

The Division of Plant Industry in the Maine Department of Agriculture, Food & Rural Resources is also requesting that the Board petition EPA for a FIFRA Section 18 specific exemption for use of thymol (Api Life Var) to control Varroa Mites in managed bee colonies. EPA approved the initial request in 2003 after hive inspections conducted during the 2002 blueberry pollination season identified four migratory beekeeping operations with coumaphos resistant Varroa Mites. The State Apiarist is again seeking this product with its different mode of action to aid growers in controlling this pest in 2005. He again points out that a healthy bee keeping industry is needed to support Maine agriculture, and that a regulatory control product is essential so that migratory bee operators may continue to service the various commodity groups in this state. The request is supported by the product distributor, Brushy Mountain Bee Farm, and their president points out they are continuing to pursue a full Section 3 Registration with EPA.

Presentation By: Wesley C. Smith  
Pesticides Registrar

Action Needed: Approve/Deny request to petition EPA for a Section 18 Specific Exemption registration for thymol for use with bees.

- ☒ This request was considered and approved jointly under the previous agenda item.

6. Request to Discontinue Sampling of Potatoes from Storages Treated with Chlopropham

At its January 2003 meeting, the Board approved a Special Local Needs (24c) registration for DECCO 271 Aerosol to control sprouting in potato storages. Because members were concerned about potential residues of the active ingredient chlorpropham in the treated

tubers, Ashley Brewer of Northeast Applicators agreed to perform residue testing according to a protocol to be developed by the Board's toxicologist and Steve Johnson at Cooperative Extension. It called for a total of 45 storages to be sampled over a three-year period. The first year's results for 11 storages are now available and show that sprouting was successfully inhibited while the highest level of chlorpropham detected was 21.8 parts per million (ppm). This amount is less than both the current tolerance of 50 parts per million and a proposed lower tolerance of 30 ppm. Based on these results, the applicator is requesting that the Board's request for additional sampling be revisited.

Presentation By: Lebelle R. Hicks, PhD., D.A.B.T.  
Pesticides Toxicologist

Action Needed: Discussion and determination if the Board is satisfied with the sampling results to date.

- ☒ Hicks reminded the members she had initially been concerned the tolerance might be exceeded if applicators used the higher rate of application. However, the sampling to date indicated this would not be a problem even if the tolerance was reduced from 50 to 30 parts per million as recommended in EPA's Temporary Registration Eligibility Document. She explained that she and Johnson were surprised to see the wide variation in readings between the two laboratories. Johnson had therefore split the most recent sample and sent it to both the University of Maine and the Idaho laboratories. Hicks reported the level of variation for the split samples was consistent with the previous results and concluded it was most likely due to the amount of washing during sample preparation. Ashley Brewer, the applicator, pointed out he was the only person being mandated to do sampling and asked the Board to discontinue the requirement. He noted that he does do a fair amount of sampling for his own purposes and promised to share that information with the staff.

Bradstreet/Walton: Motion made and seconded to discontinue the requirement for Mr. Brewer to sample all the storages he treats and to ask him to share his results with staff.

In Favor: Unanimous

7. Approval of 2005 Blueberry Pest Management Plan for Deblois Critical Pesticide Control Area

In March 1998, the Board adopted an amendment to Chapter 60 to protect the water supply for a state owned fish hatchery in Deblois from pesticide drift and runoff from surrounding blueberry fields. This critical pesticide control area still encompasses all land within 1,000 feet of the hatchery and its rearing pools and the tributary water supplies to both facilities. The rule was restructured to require that pesticide applications be made according to a Board approved pest management plan that may be updated on a regular basis without having to resort to rulemaking each time new products or technologies become available. Last year after three members visited the site, the Board approved a revised plan for the major landowner that only restricts specific pesticide use within a 500-foot radius of the spring pool and 250 from the stream. However, the plan also specifies the remaining land in the critical area will be treated according to Best Management Practices for Wild Blueberry Production. The Board also conditioned last

year's plan with a requirement that Jasper Wyman & Son submit a drift management plan for the entire critical pesticide control area, and the company has already submitted a drift management plan for this year.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Approve/disapprove the pest management plan submitted for Jasper Wyman & Son.

- ☒ Batteese advised the Department of Inland Fisheries and Wildlife still owned the fish hatchery and wanted the Board to keep the critical pesticide control area designation in effect. He noted that as a result of three members visiting the site last year the pest management plan (PMP) only needed to address applications occurring within a 500-foot radius of the spring pool and 250 feet from the stream. He pointed out that both a PMP and drift management plan identical to last year's had been submitted for 2005. Travis Drake of Wyman's was present and responded to questions from the Board.

Berry/Bradstreet: Motion made and seconded to approve the pest management and drift management plans submitted for Jasper Wyman & Son.

In Favor: Unanimous

#### 8. RWC, Inc. Request for Variance for Railroad Vegetation Management Program

The Board's drift regulations allow applicators to seek a variance from any standards they feel are unreasonable for their type of operation. This railroad vegetation control firm annually receives contracts from up to 13 different owners of railroads to perform grass, weed and brush control on their rail lines. RWC, Inc. is seeking a variance so they do not have to record all sensitive areas within 500 feet of the tracks. Instead, they propose taking other precautions that include having a spotter running ahead of the spray rig and maintaining a 10-foot buffer from all open water. In addition they are offering to provide public notification through newspaper advertisements and letters to municipalities, only use Roundup for one half mile before and after passing a public water supply, and notify Board staff at the end of each day regarding the location and herbicides to be applied the following day.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Approve/Deny the variance request.

- ☒ Batteese reminded the members this topic was on the agenda because the company had an enforcement action the past year due to a misunderstanding over the width of the railroad right of way in Rockland. He noted the company had been very cooperative in notifying staff of their spray plans and was proposing to use the same precautionary measures again in 2005. Eckert asked if there were other lakes besides Sebago Lake that served as public water supplies. Brian Chateauvert of RWC responded no but that they would also only use Roundup along Phillips Lake where the tracks were very close to the

water. Heather Jackson asked if he had seen any evidence of weeds developing resistance to any of the herbicides and Chateauvert stated not as yet. Jemison volunteered to check the literature for prospective new alternatives, and Chateauvert stated any Karmex use would only occur in the rail yards and not on the main lines.

Bradstreet/Berry: Motion made and seconded to approve the variance request according to the conditions offered in the application.

In Favor: Unanimous

9. Ratification of Additional Staff Initiated Changes to Proposed Amendment to Chapter 31 Regarding Company/Agency Affiliation of Commercial Applicator Licenses

At the January meeting, the Board approved several proposed changes to amend Chapter 31 and directed the staff to initiate rule-making with a public hearing scheduled for March 18<sup>th</sup>. Afterwards, the staff recognized the need to also codify another longstanding practice that an individual's commercial applicator license is company/agency affiliated and expires when that person leaves the employment of the company/agency. The staff has incorporated language to clarify this issue and also point out an individual may license with one or more companies/agencies into the proposed rule that has to be delivered to the Secretary of State by noon on February 15<sup>th</sup>. If the members do not approve of these additional proposed changes, the staff will be able to make that fact known to interested parties in advance of the public hearing.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Discussion and determination if the Board supports the additional language clarifying that commercial applicator licenses are company/agency affiliated.

- ☒ Batteese explained that the staff also wanted the amendment to clarify that commercial applicator licenses were company affiliated. He reported that Randlett had advised him to include the additional changes in the proposed rule which had to be submitted to the Secretary of State by February 15<sup>th</sup> in order to be considered at a public hearing on March 18<sup>th</sup>. Eckert asked if any members had a concern about the additional language and there was consensus that the new language should be considered.

10. Consideration of Staff Negotiated Consent Agreement with Carl R. Smith III of Newport

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case resulted from inspections at a potato farm over a three-year period that revealed the owner had failed to provide pesticide handler safety training as required under the federal Worker Protection Standard.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings reviewed the history of the Worker Protection Standard noting it was first introduced in 1992 and was fully enforceable by 1994. He reported that worker advocates had criticized EPA by for lack of compliance and that the agency was pressuring states to penalize repeat offenders. As a result, the staff had been more aggressive the last couple of years in notifying growers of their need to comply with the federal standard. He explained that in this case, the grower had still failed to provide even the required pesticide handler safety training. Eckert asked about the percentage of growers who provide their own training and Fish responded that most do it themselves while the AmeriCorps members concentrate on apples blueberry and broccoli growers. Bradstreet indicated he would like to be sure the staff equalized inspections throughout the state and Jennings indicated he was working on this issue.

Berry/Bradstreet: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous.

11. Consideration of Staff Negotiated Consent Agreement with Dana Wright of Littleton

This case is similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involves a potato grower who attended recertification meetings and submitted attendance verification forms not only for himself but for his brother who was not present at the training sessions. These actions constitute the filing of false or fraudulent reports that is a violation of the Board's statute.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings stated that this was a new issue that had probably been going undetected for a long time. He credited Gail Day for noticing that the handwriting was identical on some of the recertification forms. In response to a question, Fish indicated that he had asked persons hosting meetings where staff is not present to have persons sign in at the beginning of a meeting and then complete an attendance verification form at the end.

Jemison/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous.

12. Other Old or New Business

a. Legislative Update – R. Batteese

- ☒ Batteese called the members attention to the three bills in the packets, reported that Gov. Baldacci had included one million dollars in his bond package for cleaning up chemicals in schools and noted that DEP had decided not to introduce a bill since Rep. Koffman was apparently planning similar legislation.

b. Variance Permit Granted to City of Bangor  
for Roadside Vegetation Management Program – R. Batteese

- ☒ Batteese announced the staff had re-issued the City a variance permit since no problems had been reported with their program during 2004.

c. Central Maine Power Company's  
Vegetation Management Program for 2005 – R. Batteese

- ☒ Batteese reminded the members CMP voluntarily supplies this information but does not need a variance because it does not use powered equipment.

d. Other ????

- ☒ Jennings asked about progress on reviewing Aquashade and noted that many fish pond owners should be able to use pond dye to keep birds of prey from feeding on their fish. Hicks indicated that it had been difficult to get active ingredient specific information for her review. It was agreed the Board should not be making recommendations to use pond dye.

13. Schedule and Location of Future Meetings

a. The Board has tentatively scheduled the next meeting for Friday, March 18, 2005.

- ☒ The Board scheduled the next meeting for Friday, March 18, 2005 in Augusta.

b. Location and date for the following meeting.

- ☒ The Board tentatively scheduled the following meeting for April 15<sup>th</sup>.

14. Adjourn

- ☒ A motion to adjourn was accepted at 12:05 P.M.

Robert I. Batteese, Jr.  
Director